

and purpose of this Act, and declaring an emergency."

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, and be not printed.

FLOYD, Chairman.

SEVENTH DAY.

Senate Chamber,
Austin, Texas,

Friday, January 21, 1927

The Senate met at 10 o'clock a. m. pursuant to adjournment, and was called to order by Lieutenant Governor Barry Miller.

The roll was called, a quorum being present, the following Senators answering to their names:

Berkeley.	Parr.
Bowers.	Price.
Fairchild.	Real.
Floyd.	Reid.
Greer.	Russek.
Hall.	Smith.
Hardin.	Stuart.
Holbrook.	Triplett.
Lewis.	Ward.
Love.	Westbrook.
McFarlane.	Wirtz.
Miller.	Witt.
Moore.	Wood.
Neal.	

Absent.

Pollard. Woodward.

Absent—Excused.

Bailey. Bledsoe.

Prayer by the chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Floyd.

Petitions and Memorials.

(See Appendix.)

(Committee Reports.)

(See Appendix.)

Bills and Resolutions.

By Senator Ward:

S. B. No. 131, A bill to be entitled "An Act in the interest of the public safety by rendering it unlawful for any person to drive or propel an automobile, automobile truck or

other motor driven vehicle upon the track of any railroad operated by a steam railroad company, or the receiver thereof, or the track of any railroad operated by an interurban railroad company, or the receiver thereof, at the place of crossing of any public road or street at grade, after the designation of the same as dangerous by the State Highway Commission, except in certain cases, without stopping, looking and listening for approaching trains, engines or cars; by making it a misdemeanor to violate any of the provisions of the Act and prescribing punishment therefor; by providing that failure to stop at a crossing designated as a full stop shall not constitute negligence per se; by providing that the State Highway Commission shall designate crossings as dangerous and give notice thereof, etc., and declaring an emergency."

Read first time and referred to Committee on Civil Jurisprudence.

By Senator Ward:

S. B. No. 132, A bill to be entitled "An Act amending Article 1256 and 1257 of the Penal Code of 1925, so as to properly define murder, and fixing the punishment for murder; repealing Chapter 15 of Title 15 of the Penal Code of 1925, relating to manslaughter, and all other laws in conflict with this Act; and declaring an emergency."

Read first time and referred to Committee on Criminal Jurisprudence.

By Senator Stuart:

S. B. No. 133, A bill to be entitled "An Act amending Article 187 of the Revised Civil Statutes of 1925, relating to the bond of district clerks; more adequately providing for bonds of district clerks; providing that the county shall pay the premium of said bonds out of the general county fund; and declaring an emergency."

Read first time and referred to Committee on State Affairs.

By Senator Hall:

S. B. No. 134, A bill to be entitled "An Act to amend Article 1036, Title 15, Chapter 1 of Code of Criminal Procedure of the State of Texas of 1925, allowing witness fees and mileage in all out county felony cases in the sum of five cents per mile for each mile traveled going to and com-

ing from the court or grand jury and two dollars per day for each day of service and such witnesses in all cases who attend in obedience to any process issued by any grand jury or any court in this State other than any county of their residence."

Read first time and referred to Committee on Criminal Jurisprudence.

By Senator Smith:

S. B. No. 135, A bill to be entitled "An Act amending Article 333 of Criminal Procedure of the State of Texas, as recodified and adopted at the Regular Session of the Thirty-ninth Legislature, 1925, relating to the appointment of Jury Commissioners to select Grand Jurors providing for their compensation and prescribing their qualifications so as to provide for the appointment of not less than three nor more than five in the discretion of the District Judge, and declaring an emergency."

Read first time and referred to Committee on Criminal Jurisprudence.

By Senator Smith:

S. B. No. 136, A bill to be entitled "An Act amending Article 2104 of the Revised Civil Statutes of the State of Texas, as recodified and adopted at the Regular Session of the Thirty-ninth Legislature, 1925, relating to the appointment of Jury Commissioners to select Petit Jurors, providing for their compensation and prescribing their qualifications, so as to provide for the appointment of not less than three nor more than five, in the discretion of the District Judge and declaring an emergency."

Read first time and referred to Committee on Civil Jurisprudence.

By Senator Fairchild:

S. B. No. 137, A bill to be entitled "An Act repealing Article 6815 of the Revised Civil Statutes of 1925, in so far as it fixes the compensation of superintendents of eleemosynary institutions; repealing any and all laws fixing the compensation of said superintendents; providing that hereafter the salary of such superintendents shall be the amount fixed in the Appropriation Act passed by the Legislature; and declaring an emergency."

Senators Excused.

On motion of Senator Wirtz, Senator Bledsoe was excused until Monday. On motion of Senator Holbrook, Senator Bailey was excused until Monday.

This concluded the morning call.

Amendment to Senate Rule.

The Chair laid before the Senate as special order the amendment by Senator Love to Senate Rule No. 70.

The Chair announced that Senator Love had the floor.

Senator Holbrook moved to indefinitely postpone the amendment and the motion to adopt the minority report. The previous question was ordered, and the motion to indefinitely postpone was adopted by the following vote:

Yeas—20.

Berkeley.	Reid.
Bowers.	Russek.
Hardin.	Smith.
Holbrook.	Stuart.
Lewis.	Triplett.
Miller.	Ward.
Moore.	Westbrook.
Parr.	Wirtz.
Price.	Witt.
Real.	Wood.

Nays—6.

Fairchild.	Love.
Floyd.	McFarlane.
Greer.	Neal.

Absent—Excused.

Bailey.	Woodward.
Pollard.	

(Paired)

The following pair was announced: Senator Hall present, who would vote yea, with Senator Bledsoe absent, who would vote nay.

Message from the House.

The Chair recognized the Doorkeeper who introduced a messenger from the House with the following message:

Hall of the House of Representatives
Austin, Texas, January 21, 1927
Hon. Barry Miller, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills:

H. B. No. 5, A bill to be entitled "An Act amending Chapter 115 Local and Special Laws of the Regular Session of the Thirty-fifth Legislature, same being a Special Road Law for Duval County, by adding thereto Sections 17, 18, 19, 20, 21, 22 and 23; validating an election for the issuance of Special Road Bonds of said county; enacting provisions necessary and incidental to the subject and purpose of this Act, and declaring an emergency."

H. B. No. 52, A bill to be entitled "An Act to amend House Bill No. 369 of the Acts of the Thirty-ninth Legislature, Regular Session, Chapter 86, and providing for the reorganization, of the Thirty-first Judicial District of Texas; naming the counties constituting the same; creating and organizing the One Hundred and Seventh Judicial District of Texas, and naming the counties therein; fixing the time and terms of the district courts, etc."

H. C. R. No. 2, A Resolution memorializing Congress to enact legislation conserving agricultural industry and stabilizing methods of distribution.

Respectfully submitted,

C. L. PHINNEY.

Chief Clerk, House of Representatives.

Simple Resolution No. 29.

Senator Wirtz sent up the following resolution:

By Senator Wirtz:

I move that the Senate Rules of the Thirty-ninth Legislature, as printed in the Legislative Manual of the Thirty-ninth Legislature, be adopted as the permanent rules of the Fortieth Legislature.

The resolution was read.

Senator Love sent up the following Amendment to S. R. No. 29 providing for an addition to Senate rules:

By Senator Love:

Amend Rule 70, by adding to the end thereof the following:

(37).—A Committee on Legislative Representation.

The Committee on Legislative Representation shall have the power to send for persons and papers and to summon and examine witnesses under oath and it shall be its duty to make such examinations and investi-

gations as it shall deem advisable, or as may be requested in writing by any senator, for the purpose of ascertaining and informing the Senate of the facts pertinent to the employment or compensation of any legislative representative, agent or attorney, to influence legislation, including any contributions heretofore made by any such representative agent or attorney, or by any person, firm or corporation represented by them, to campaign funds in this State.

Said Committee shall hold open sessions, and from time to time, shall report to the Senate the testimony of all witnesses examined by it and all sworn statements filed with its chairman.

The amendment was read.

Senator Miller moved to table the amendment.

The motion to table prevailed by the following vote:

Yeas—14.

Bowers.	Real.
Hardin.	Russek.
Holbrook.	Stuart.
Lewis.	Ward.
Miller.	Westbrook.
Moore.	Wirtz.
Parr.	Wood.

Nays—10.

Berkeley.	Neal.
Fairchild.	Price.
Floyd.	Smith.
Greer.	Triplett.
Love.	Witt.

Absent.

Reid.

Absent—Excused.

Pollard.

Woodward.

(Paired)

Senator Hall present, who would vote yea, with Senator Bledsoe absent, who would vote nay.

Senator McFarlane, present, voting "Nay" with Senator Bailey, absent, who would vote "Yea."

The resolution by Senator Wirtz was adopted.

S. C. R. No. 7.

By Senator Witt:

Whereas, there are many lawyers holding membership in the Fortieth Legislature of Texas, and

Whereas, it will be a great handi-

cap to the work of the Legislature for these lawyers to be compelled, during the Session of said Legislature, to leave its work and be required to try law suits,

Therefore, be it Resolved, The House concurring, that the district judges of Texas be, and they are hereby requested to reset or continue all cases in which any member of the Legislature is counsel, where such request by such Legislator is made, so that this Legislature may have the attendance continuously of its lawyer members and have the benefit of their counsel and service at all times.

The resolution was read and adopted.

Simple Resolution No. 30.

By Senator Fairchild:

Whereas, Senator Neal from Carthage, is very much interested in prison reform and has given the subject close and careful consideration and would be a great assistance to the present Committee on Penitentiaries,

Therefore, be it Resolved, that she be added to the Committee.

FAIRCHILD, Chairman.

The resolution was read and adopted.

House Bills Read and Referred.

The following House Bills were laid before the Senate, read severally, first time and referred to appropriate committees:

House Bill No. 52 referred to Committee on Judicial Districts.

House Concurrent Resolution No. 2 referred to Committee on Agriculture.

Senate Bill No. 109.

Senator Wirtz moved that S. B. No. 109 be withdrawn from the Committee on State Affairs and referred to the Committee on Highways and Motor Traffic.

Adjournment.

Senator Holbrook moved that the Senate adjourn until Monday morning at 10 o'clock.

The motion lost by the following vote:

Yeas—10.

Fairchild.	Russek.
Floyd.	Stuart.
Hall.	Ward.
Holbrook.	Westbrook.
Miller.	Wirtz.

Nays—13.

Berkeley.	Parr.
Greer.	Price.
Lewis.	Reid.
Love.	Smith.
McFarlane.	Triplett.
Moore.	Wood.
Neal.	

Absent.

Bowers.	Real.
Hardin.	Witt.

Absent—Excused.

Bailey.	Pollard.
Bledsoe.	Woodward.

Recess.

On the motion of Senator Reed the Senate, at 11:55 a. m., recessed until 2:00 p. m., this afternoon.

After Recess.

The Senate was called to order by President Pro Tem Wood at 2:00 p. m., pursuant to recess.

Executive Session.

On the motion of Senator Wirtz, the Senate agreed to go into Executive Session at 2:30 p. m., and requested the Committee on Governor's Nominations to report at that time, in view of the Senate rule preventing them from making a report within three days except upon request of the Senate.

Senate Bill No. 3.

The Chair laid before the Senate, the following bill:

By Senator Bowers:

S. B. No. 3, A bill to be entitled "An Act to amend Article 8029 of the Revised Civil Statutes of Texas of 1925, relating to the dissolution of levee improvement districts, by leaving said Article 8029 just as it is, but adding sections thereto, providing for dissolution of levee improvement districts which have failed to function; providing a procedure by which levee improvement districts may voluntarily abolish their corporate existence, providing for the settlement of debts, retirement of bonds, custody of property, and appointment of a trustee to close up the affairs of such districts, and providing ways and means for holding elections to decide whether or not such districts will be

dissolved; and declaring an emergency."

The bill was read second time and laid on the table subject to call.

Bill Signed.

After its caption was read the Chair signed in the presence of the Senate, S. B. No. 5.

Simple Resolution No. 31.

Senator Wirtz received unanimous consent to send up the following resolution:

By Senator Wirtz:

Resolved that the two regular elevator operators be paid extra compensation for extra work done by them on Sunday while the Fortieth Legislature is in session, at the rate of \$4.00 per day each, for such extra time, out of the contingent expense fund of the Senate.

The resolution was read and adopted.

Senate Bill No. 4.

The Chair laid before the Senate, the following bill, on second reading:

By Senator Westbrook:

S. B. No. 4, A bill to be entitled "An Act requiring all corporations, firms, dealers and persons selling or exposing for sale, by wholesale or retail, any goods, wares, merchandise or articles manufactured, produced or made, in whole or in part, in any penitentiary, prison, reformatory, or penal institution, or by any convicts or prisoners or persons serving sentence in a reformatory, to have upon the container for such goods, wares, merchandise and articles, and upon each and every individual garment or article so manufactured, produced or made a plain and distinct label in the English language, clearly showing in what penitentiary, prison or reformatory or penal institution such goods, wares, merchandise or articles were manufactured; and forbidding the sale of such goods, wares, merchandise or articles without such label; and imposing a penalty for selling or exposing for sale any such goods, wares, merchandise or articles without such label; and declaring an emergency."

The bill was read second time.

Executive Session.

At 2:30 p. m., the Chair announced that the hour had arrived for the

Executive Session, and instructed the Sergeant-at-Arms to clear the Senate for Executive Session.

Back in the Senate.

The Senate reconvened at the close of the Executive Session, and the Secretary reported the confirmation of the following nominees of the Governor:

Mrs. Jane Y. McCallum of Travis County, to be Secretary of State.

Governor Joseph D. Sayers of Travis County, to the Board of Pardon Advisors.

Hon. Geo. E. Christian of Burnet County, to the Board of Pardon Advisors.

Major R. L. Robertson of Gonzales County, to be Adjutant General.

Dr. J. C. Anderson of Hale County, to be State Health Officer and a member of the State Board of Health.

Hon. Hugh Nugent Fitzgerald of Travis County, to the Board of Regents of the College of Industrial Arts.

Hon. James L. Young of Kaufman County to the Board of Directors of the Agricultural and Mechanical College.

Hon. P. L. Downs, Jr., of Bell County, to the Board of Directors of the Agricultural and Mechanical College.

Hon. Amon G. Carter of Tarrant County, to the Board of Directors of Texas Technological College.

Hon. Earnest O. Thompson of Potter County, to the Board of Directors of Texas Technological College.

Hon. R. A. Underwood of Hale County, to the Board of Directors of Texas Technological College.

Senate Bill No. 4.

The question recurred upon engrossment of S. B. No. 4.

On the motion of Senator Price the bill was set for special order Monday morning at the close of the morning call.

House Bill No. 52.

Senator Reed received unanimous consent to take up out of its order the following bill:

By Mr. Gray, Mr. Satterwhite and Mr. Young:

H. B. No. 52, A bill to be entitled "An Act to amend House Bill No. 369 of the Acts of the Thirty-ninth Legislature, Regular Session. Chapter 86,

and providing for the reorganization of the Thirty-first Judicial District of Texas; naming the counties constituting the same; creating and organizing the One Hundred and Seventh Judicial District of Texas, and naming the counties therein; fixing the times and terms of the district courts, etc."

On motion of Senator Reed, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 52 put on its second reading by the following vote:

Yeas—22.

Berkeley.	Parr.
Bowers.	Price.
Greer.	Reid.
Hall.	Smith.
Hardin.	Stuart.
Holbrook.	Triplett.
Lewis.	Ward.
Love.	Westbrook.
McFarlane.	Wirtz.
Moore.	Witt.
Neal.	Wood.

Absent.

Fairchild.	Real.
Floyd.	Russek.
Miller.	

Absent—Excused.

Bailey.	Pollard.
Bledsoe.	Woodward.

The bill was read second time.

The Senate rule requiring committee reports to lie over one day was suspended by unanimous consent.

The committee report was adopted.

On motion of Senator Reed, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 52 put on its third reading and final passage, by the following vote:

Yeas—23.

Berkeley.	Parr.
Bowers.	Price.
Fairchild.	Reid.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Moore.	Wood.
Neal.	

Absent.

Floyd.	Real.
Miller.	Russek.

Absent—Excused.

Bailey.	Pollard.
Bledsoe.	Woodward.

The bill was read third time and passed finally, by the following vote:

Yeas—24.

Berkeley.	Neal.
Bowers.	Parr.
Fairchild.	Price.
Floyd.	Reid.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Moore.	Wood.

Absent.

Miller.	Russek.
Real.	

Absent—Excused.

Bailey.	Pollard.
Bledsoe.	Woodward.

Bills and Resolutions.

Unanimous consent was granted to send up the following bills and resolutions:

By Senator Stuart:

S. B. No. 138, A bill to be entitled "An Act amending Article 5142, of the Revised Civil Statutes, providing for juvenile officers, etc., and declaring an emergency."

Read first time and referred to Committee on Civil Jurisprudence.

By Senator Ward:

S. B. No. 139, A bill to be entitled "An Act to amend Article 5922, of Title 96, of Revised Statutes, 1925, relating to removal of disabilities of minors, and declaring an emergency."

Read first time and referred to Committee on Civil Jurisprudence.

✓ By Senator Witt:

S. B. No. 140, A bill to be entitled "An Act to amend Article 2757, of the Revised Statutes, of 1925, relating to formation of independent school districts, and declaring an emergency."

Read first time and referred to Committee on Educational Affairs.

✓ By Senator Neal:

S. B. No. 141, A bill to be entitled "An Act to amend Article 2889a, of the Revised Statutes, of 1925, pertaining to the issuance of teachers' certificates."

Read first time and referred to Committee on Educational Affairs.

S. C. R. No. 8.

By Senator Moore:

Whereas, the State of Texas at present has no State Bird, and,

Whereas, the Texas Federation of Women's Clubs has adopted appropriate resolutions on this subject, as follows:

Selection of a State Bird.

"Whereas, The Texas Federation of Women's Clubs is supporting a program for the protection of birds and sponsors any legislative movement that has for its object an increased interest in their economic and esthetic value and a more intelligent and sympathetic understanding of our feathered friends, and,

"Whereas, The committee on birds and flowers, after investigation and deliberation, thinks the time is opportune for the selection of a state bird, and,

"Whereas, Ornithologists, musicians, educators and Texas in all walks of life unite in proclaiming the mocking bird the most appropriate species for the state bird of Texas, as it is found in all parts of the State, in winter and in summer, in the city and in the country, on the prairie and in the woods and hills, and is a singer of distinctive type, a fighter for the protection of his home, falling, if need be, in its defense, like any true Texan,

"Therefore be it Resolved, That the Texas Federation of Women's Clubs in convention assembled, go on record as naming the mocking bird the state bird of Texas, and asking that confirmation of such action be had at the approaching Regular Session of the Fortieth Legislature."

Therefore be it Resolved, By the Senate of the State of Texas, the House of Representatives concurring, that the recommendations of the Texas Federation of Women's Clubs be and are hereby adopted and that the mocking bird be and the same is hereby declared to be the State Bird of Texas.

The resolution was read and referred to Committee on State Affairs.

Adjournment.

The Senate, at 3:10 p. m., on the motion of Senator Wirtz, adjourned until Monday morning at 10:00 o'clock.

APPENDIX

Committee Reports.

Committee Room,

Austin, Texas, January 21, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Labor, to whom was referred

S. B. No. 71, A bill to be entitled "An Act prescribing and fixing the number of hours that shall constitute a legal day's work on all work being performed by or on behalf of the State of Texas, or by or on behalf of any county, municipality or other legal or political subdivision of said State; providing for cases of emergency; prescribing penalties for its violation, and expressly repealing an Act passed at the Regular Session of the Thirty-second Legislature, known as House Bill No. 98, and being the same Act that was attempted to be vetoed by the Governor, but which veto was held ineffective by the Supreme Court because the veto message was filed with the Secretary of State after the expiration of twenty days as held by the Supreme Court in the case of R. B. Minor et al, vs. C. C. McDonald, Secretary of State; and expressly repealing House Bill No. 298, known as Chapter 121 of the Acts of the Thirty-seventh Legislature, Regular Session 1921, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass with the following committee amendment:

The time consumed by the laborer in going to and returning from the place of work shall not be considered as part of the hours of work.

WESTBROOK, Chairman.

Committee Room,

Austin, Texas, January 20, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 55, A bill to be entitled "An Act amending Sections 7, 10

and 29, of Chapter 172, of the General Laws of the Regular Session of the 39th Legislature so as to better provide for protection of game, and providing in a more adequate manner for limits of game or wild birds and animals that may be taken, killed, or possessed; providing for hunting licenses in this State; enacting proper provisions for the protection of wild female deer, wild fawn deer, and wild buck deer; defining the necessary offenses and prescribing penalties to carry out the provisions of this Act; providing for proper fees of officers and all things incidental to the main purpose of this Act; and declaring an emergency."

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass.

WIRTZ, Chairman

Committee Room,

Austin, Texas, January 20, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 56, A bill to be entitled "An Act amending Section 8, of Chapter 177, of the General Laws of the Regular Session of the Thirty-ninth Legislature, which Section relates to wild beaver, wild otter and wild fox and the pelts thereof, so as to provide that said Section shall not apply to wild fox in that portion of Texas lying west of a line starting at the mouth of the Brazos River where it empties into the Gulf of Mexico, thence following the meanderings of the Brazos River north to the intersection of the east boundary line of Young County, thence north along the west boundary line of Jack and Clay Counties to the Red River; and declaring an emergency."

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass.

WIRTZ, Chairman

Committee Room,

Austin, Texas, January 20, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 60, A bill to be entitled "An Act amending Section 4, of Chapter 29, of the General Laws of the Second Called Session of the

Thirty-eighth Legislature and adding thereto Section 4-a and amending Section 7 of said Chapter 29, so as to exempt from the inheritance tax provided for in said Chapter bequests, devises, gifts, grants, conveyances and transfers of any kind or character whatsoever passing to or for the use of religious, educational or charitable organizations located within this State or to a city, town or county, within this State or to the State of Texas, to be used within this State; and relieving and releasing any and all beneficiaries of the kind and character above mentioned from payment of any inheritance taxes which may have heretofore accrued; and repealing all laws and parts of laws in conflict with this Act; and declaring an emergency."

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass.

WIRTZ, Chairman

Committee Room,

Austin, Texas, January 20, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 102, A bill to be entitled "An Act authorizing the district attorney of the Criminal District Court for the Counties of Nueces, Kleberg, Kenedy, Willacy and Cameron to appoint assistant district attorneys and investigators; providing for their salaries, prescribing their qualifications and duties; and declaring an emergency."

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass.

Respectfully submitted,

WIRTZ, Chairman

(Majority Report.)

Committee Room.

Austin, Texas, January 20, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, a majority of the Committee on Judicial Districts, to whom was referred

S. B. No. 28, A bill to be entitled "An Act amending Section 1, of an Act passed by the Thirty-ninth Legislature of Texas, and being Chapter 87, of the Acts of the Regular Session of the Thirty-ninth Legislature,

constituting and organizing courts of civil appeals therein; creating the Twelfth Supreme Judicial District of Texas, with Wichita Falls as the site of said Court; providing for the appointment and qualification of the judges of said Twelfth Supreme Judicial District and other officers thereof; providing for the transfer of cases and regulating appeals from the lower courts of the counties constituting said Twelfth Supreme Judicial District of Texas; making appropriation for the support of said court, and declaring an emergency."

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, and be not printed.

HARDIN, Vice-Chairman.

(Minority Report.)

Committee Room,
Austin, Texas, January 20, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, a minority of the Committee on Judicial Districts, to whom was referred

S. B. No. 28, A bill to be entitled "An Act amending Section 1 of an Act passed by the Thirty-ninth Legislature of Texas, and being Chapter 87 of the Acts of the Regular Session of the Thirty-ninth Legislature, constituting and organizing courts of Civil Appeals therein; creating the Twelfth Supreme Judicial District of Texas, with Wichita Falls as the site of said court; providing for the appointment and qualification of the judges of said Twelfth Supreme Judicial District and other officers thereof; providing for the transfer of cases and regulating appeals from the lower courts of the counties constituting said Twelfth Judicial District of Texas; making appropriation for the support of said court, and declaring an emergency."

We beg leave to report that we have had the same under consideration and report the same back to the Senate with the recommendation that it do not pass.

PRICE.
LEWIS.

Committee Room,
Austin, Texas, January 21, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on

Agriculture, to whom was referred

S. B. No. 82, A bill to be entitled "An Act to amend Article 164 of the Revised Civil Statutes of Texas, 1925, providing that the commissioners' court of any county of this State is authorized to establish and conduct co-operative demonstration work in agricultural and home economics in co-operation with the Agricultural and Mechanical College of Texas, upon such terms and conditions as may be agreed upon by the commissioners' court and the agents of the Agricultural and Mechanical College of Texas; and providing that any such court may employ such means, and appropriate and expend such sums of money, as may be necessary to effectively carry on such demonstration work in agriculture and home economics in their respective counties, and declaring an emergency."

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass.

HARDIN, Chairman.

Committee Room,
Austin, Texas, January 21, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Judicial Districts, to whom was referred

H. B. No. 52, A bill to be entitled "An Act to amend H. B. No. 369 of the Acts of the Thirty-ninth Legislature, Regular Session, Chapter 86, and providing for the re-organization of the Thirty-first Judicial District of Texas, naming the counties constituting the same, creating and organizing the One Hundred Seventh Judicial District of Texas and naming the counties therein, fixing the times and terms of the district courts in the several counties of said two Judicial Districts, providing for the appointment of a District Judge and District Attorney for the One Hundred Seventh Judicial District hereby created; providing further that the Honorable W. R. Ewing and J. A. Holmes shall remain as officers of the re-organized Thirty-first Judicial District; providing further that process issued, and bonds and recognizances made, and grand and petit jurors, drawn to the terms now fixed by law, before the taking effect of this Act, shall be valid for

and returnable to the several terms as herein set forth fixing the time of taking effect of this Act; repealing all laws and parts of laws in conflict herewith and declaring an emergency."

Have had the same under consideration and I am instructed to report the same back to the Senate with the recommendation that it do pass.

PRICE, Chairman.

Committee Room,

Austin, Texas, January 21, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, a majority of the Committee on Agriculture to whom was referred

S. B. No. 69, A bill to be entitled "An Act authorizing the Commissioners of Agriculture to establish, maintain and enforce quarantine regulations to protect the agricultural and horticultural interests of this State against infestation by insect pests and plant diseases; to prohibit or restrict the sale and transportation of such plants and plant products as are known to carry insect pests and plant diseases; to have full power to deal with dangerous fruit and crop pests and plant diseases in such manner as may be necessary to carry into effect provisions of this Act; to have authority to declare "pest-free" zones; providing for hearings to be held by the Chief Entomologist of the Department of Agriculture and others that may be designated; providing for due notice for such hearings and reports of the proceedings had; providing for appeal from the decision of the Commissioner of Agriculture; providing for declaration of "control" or "eradiction" zones by the Commissioner of Agriculture upon recommendation of the commissioners' court of any county in this State; making it the duty of the Commissioner of Agriculture to cause an investigation to be made of the existence or non-existence of any pest in any area when called upon by the commissioners' court; providing for the commissioners' court to hold hearings and to make report to the Commissioner of Agriculture of its conclusions; authorizing the commissioners' court to appropriate moneys to carry into effect the provisions of this Act; providing for the examination and licensing of persons

offering themselves as experts for hire to do tree pruning, spraying, fertilizing, budding, grove supervision, tree surgery or treatment of diseased trees or orchards; providing that this Act shall be cumulative of all laws now on the statute books; providing penalties and declaring an emergency."

We beg leave to report that we have had the same under consideration and report the same back to the Senate with the recommendation that it do pass.

HARDIN, Chairman.

Committee Room,

Austin, Texas, January 21, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, a majority of the Committee on Agriculture to whom was referred

S. B. No. 128, A bill to be entitled "An Act to provide for co-operation between the State of Texas and the United States Department of Agriculture in the destruction of predatory animals, coyotes, wolves, mountain lions, bobcats and other predatory animals, and rodent pests i. e. prairie dogs, jack rabbits, pocket gophers, and ground squirrels, appropriating funds for such purposes and declaring an emergency."

We beg leave to report that we have had the same under consideration and report the same back to the Senate with the recommendation that it do pass.

HARDIN, Chairman.

Message From the Governor.

[Delivered to a joint session, Wednesday, January 19, 1927.]

To the Members of the Fortieth Legislature:

Obedient to that provision of the Constitution of this State which makes it the duty of the Governor, at the commencement of each session of the Legislature, by message to address the Legislature on the condition of the State, and to recommend such measures as he may deem expedient, I herein submit to you my views upon those subjects now demanding your consideration.

I felicitate the members of the Legislature upon the opportunity now presented to them for public service. You have been chosen by the people at a time when our State

needs constructive legislation, and when questions of tremendous importance are to be decided. As the repository of the power of five million people of Texas, yours is the privilege, through beneficent and wise legislation, to improve the condition of our State, and to promote the prosperity and happiness of our people. What you do here touches practically every activity of human conduct and every enterprise and business in which men engage. I hope that all of us alike may pursue a progressive policy toward the diverse problems affecting the public interest. Without being reactionary, let us in our attempts to build for the progress of our State, profit in our day by all the experience of the past in the development of our government, under whose benign influence our people have been blessed with prosperity and contentment. The far-reaching influence of your acts, the effect which they are to have upon the present and future generations, and the sacred trust which the citizenship of this State has confided into your keeping as members of the Legislature, and into mine as the Executive, demand that we divest ourselves of all partisan or selfish interest, and look with an eye single to the accomplishment of the people's will, the development of the commonwealth, and the promotion of the public welfare.

I believe it to be an axiom of political science that it is better to have a few laws wisely enacted and well administered, than to attempt to regulate all the details of human conduct by legislation. I further believe that a wholesome respect for the laws of our country is essential to the good order of society, and that to secure respect for law it is necessary that the law itself be kept respectable. Hasty and ill considered legislation may be beneficial in some instances, but in the enactment of laws that are to govern the conduct of society and control the lives of our people great care and consideration should be given to see that all measures enacted are wise, wholesome and needed. An eminent jurist of our State has stated that "a large statute book does not always denote wholesome laws wisely enacted." I wish to urge the most thoughtful and thorough consideration of every

bill proposed for enactment. Therefore, I state to you at the beginning of this Session, and of my Administration, that I shall not urge this Legislature to be hasty in its deliberations and advance the date of its adjournment. On the contrary, I respectfully request of you the most serious and deliberate consideration of those subjects that may come before your body. I shall not hesitate, if the time prescribed by the Constitution for the regular session of this Legislature is not sufficient, to convene the Legislature promptly in special session for the purpose of completing its duties. I do not mean to suggest the practice of dilatory tactics,—and I am certain that the character of this Legislature and the high conception of duty which its members hold would prevent such practice,—but I mean to say that such time as is needed for the mature consideration of the people's business will be granted.

I believe that the three departments of government should, as is contemplated by the Constitution, be kept distinct and independent. I shall not attempt to infringe upon the rights of either the Legislative or Judicial Departments. However, as the Constitution gives the Executive the power to suggest, and the Legislature the power to enact, and the Executive the power to approve or disapprove, I offer and ask the largest measure of co-operation and friendly feeling between your body and the Executive Office.

From information furnished me by other officers of the State Government, the following figures are given with reference to the financial condition of the State. The amount of unused appropriations made for the present fiscal year is the sum of \$14,121,320.50. Deficiency appropriations have been authorized by the Executive Office, since the last Session of the Legislature and prior to January 1, 1927, in the sum of \$180,500.00. There were issued prior to January 1, 1927, for sheriffs' and other officers' accounts, deficiency warrants in the sum of \$56,627.84, and to this is to be added the estimated amount of deficiencies to be issued for these accounts during the remainder of the fiscal year, which estimated amount is the sum of \$200,000.00. The amount of prior

appropriations unused to January 1, 1927, is \$2,380,250.24. The total of these figures is \$16,938,698.58, which represents the amount of money that may be drawn against the income of the State during the remainder of the fiscal year. It is estimated that the receipts for the fiscal year ending August 31, 1927, will be the sum of \$18,415,720.15, of which \$4,224,157.64 has heretofore been collected, leaving the estimated net income of the State for the year ending August 31, 1927, at \$14,502,426.39. On the 31st of December, 1926, there was in the general revenue fund of the State Treasury the sum of \$1,342,967.12, with outstanding warrants against it amounting to \$681,045.22.

It appears that a deficit in the revenue of the State between now and the close of the fiscal year is inevitable, and that it will amount to possibly \$2,000,000.00. If the usual appropriations for education and for the available school fund had been made by the preceding Legislature, a deficiency would already have occurred. I mention this in the hope that the Legislature will co-operate with the Executive Office in an effort so to adjust matters that the prospective deficiency may be prevented.

The budget prepared by the Board of Control for the ensuing biennium recommends the appropriation of \$37,748,058.56 for the support of the government in its various functions. The State should not be penurious, but the exaction of a greater tribute by way of taxes levied and collected than is necessary for the efficient and economical administration of the government is to be condemned.

I urge that the Legislature in the appropriation of the public revenue bend every effort toward the utmost degree of frugality consistent with the functions of government. Necessary activities of the government should not be crippled for the want of sufficient funds, but in the expenditure of the people's money let us realize that they have no security for the practice of economy except in the fidelity of their public officials. As in all other affairs, it is our solemn duty to protect the interests of the people of our State, and the spirit of the Constitution

with regard to appropriations should be strictly observed.

As a program of legislation contemplated improvement of conditions in our State, I suggest for your consideration the following subjects:

1. Correction of existing tax evils and abuses by the development of a scientific system of taxation.

2. Reform in our Judicial system and court procedure calculated to accomplish a surer, more speedy, economical and equitable administration of justice fairly to bring justice more nearly within the reach of rich and poor alike.

3. The enactment of a classified civil service law.

4. Provision for a unified system of accounting for all State departments.

5. The enactment of laws to protect the public from the indiscriminate pardoning of criminals, and to insure an opportunity for a full and complete hearing of both sides in every application for the granting of a pardon, and if necessary to these ends amend the Constitution.

6. The efficient and economical development of a system of correlated State highways, taking care to safeguard against the evils shown to exist in the administration of highway affairs in this State, and providing an equitable means of securing adequate revenues for the Highway Department.

7. The improvement of our election laws.

8. The amendment of our law with reference to libel.

9. The enactment of legislation to carry into effect the recently adopted amendments to the Constitution and to provide for improvement in our State penitentiary system.

10. The co-ordination of our educational institutions, the elimination of all duplications, and the provision of a stabilized income therefor.

11. The further development of our ports to the end that the products of Texas, transported through them may enjoy the benefits of the saving incident to water transportation.

Taxation.

The original system of taxation employed in this State for the raising of revenue has been found insufficient to supply the needed revenues and from time to time has been

patched by the passage of additional tax measures. As new activities of the government have been multiplied, the population of the State has grown, and increased demand for taxes necessitated, the Legislature has been forced to look about for additional sources of supply for needed revenues. The existing system of taxation has been built up with lack of regard for a scientific and just distribution of the burdens of government. In addition, our taxes are collected and paid into the Treasury at considerable expense, which in the end amounts to a loss to the State. The provision contained in our Constitution that "taxation shall be equal and uniform" had a most praiseworthy purpose. Our taxes should be so levied that the burden will fall equitably and uniformly upon the citizenship of this State. It is conceivable that the object of that provision of the Constitution was none other than a declaration against any situation which might bring about unequal or unfair taxation, but the interpretation which has been placed upon this provision has made it an obstacle to improvement.

I approach this question conscious of the fact that a prejudice exists against molesting our tax laws. But in spite of this prejudice, I believe that possibilities for the good of Texas lie in some revision of our system of taxation.

At the present time an ad valorem tax is levied on all property in the State, and the burdens of taxation vary as the valuations of the property vary, with the result that the tax is neither equal nor uniform. In many instances the tax upon land and many other properties is unfairly burdensome when the revenue received by the owner from the property is considered. I do not advocate an increase of taxes; but through frugal administration of public affairs and through a correction of existing inequalities I hope that you may be able to relieve the people of some of their tax burdens.

I suggest to the Legislature with reference to this matter the following program:

That the Legislature submit to the people an amendment to the provisions of the Constitution herein referred to, which would permit the

Legislature to enact laws separating the subjects of taxation. I have in mind the ultimate purpose that the Legislature may enact laws permitting each county to levy an ad valorem tax for the support of the functions of government of the county, and that such taxes as involve gross receipts, the inheritance, various occupations, intangible assets, and other taxes, which effect acts and things Statewide in their nature, be levied directly by the State and paid quarterly into the State Treasury. In this manner each county would support, through its ad valorem tax, its own activities of government; and in one county the rate levied for county purposes on the value of the property might be low and the rendition high, and in another county the rendition low and the rate high, as the counties might determine; but ample revenue from those sources made the subject of taxation for State support would be paid directly into the State Treasury. This would prevent a deficit in the revenues of the State at any time, save much of the cost of collection of these taxes, and minimize the danger of extravagant appropriations through the accumulation of a large surplus.

As an aid to the foregoing suggestion I recommend to the Legislature that provision be made for a scientific investigation of taxable resources in this State by a committee of citizens and experts to be appointed and employed under appropriate acts of the Legislature. The survey should be thorough and a report submitted to the Legislature of the results and recommendations. If the Legislature should see fit to adopt this policy and such a committee be appointed which would report within the next two years, it would be my policy to convene the Legislature to hear its report and to take such action thereon as the Legislature in its wisdom might determine.

Judicial Reform.

Under judicial reform I have several specific suggestions to make, which are as follows:

1. That the Legislature submit to the people at the earliest time possible a general revision of Article V of the Constitution of Texas.

It should be provided that the Su-

preme Court consist of not less than nine members. The cases coming before the Supreme Court have grown so great in number that the inability of three men to dispose of them has been clearly established. The present system of a Supreme Court and two Commissions of Appeals is the equivalent in cost of a Supreme Court of nine members, but it cannot dispose of the business with the dispatch and certainty of a Supreme Court of nine members. Under the present system the case is argued before three judges, and the three units work separately, two units being without authority, except as their opinions are reviewed and approved by the Supreme Court. The opinions of the Commission of Appeals, when approved and adopted by the Supreme Court, have the force to decide important questions of law of far-reaching effect, but the questions have never been argued before the court which must approve the opinions, and the volume of business must limit the Court to a superficial examination of the questions involved. The Court necessarily gives of its time to a review of the opinions prepared by the Commissions, with the result that three men are checking the work of six. Since the business of the Court calls for nine judges, the State should have a Supreme Court of nine members, rather than have six men working simply as aids to the three members of the Court. An increase in the personnel of the Supreme Court to nine members would not result in additional cost to the people of Texas, and it would aid in the speedy administration of justice.

2. The rules of practice and procedure should not be mandatory, but directory, and the Supreme Court should have power to establish the rules of procedure in civil causes, and be given proper aid to that end by the creation of an advisory judicial council composed of representatives from the several courts, members of the bar and outstanding laymen.

3. Abolish all distinctions between first and second applications. The law regarding the first application for a continuance in both civil and criminal cases should be amended to facilitate the bringing of cases to trial.

4. Articles 1256 and 1257 of the Penal Code should be amended so as to read as follows:

"Article 1256. Whoever shall voluntarily and intentionally kill any person within this State shall be guilty of murder. Murder is distinguished from every other species of homicide by the absence of circumstances which reduce the offense to negligent homicide, or which excuse or justify the killing."

"Article 1257. The punishment for murder shall be death or confinement in the penitentiary for life, or for any term of years not less than two."

Such other amendments should be made to Chapters 15 and 16 of the Penal Code as are necessary to carry out the intention of the two amendments above suggested.

In the enforcement of the criminal laws there is perhaps no greater difficulty experienced by the court than to determine when, under what circumstances and how to charge on the offense of manslaughter. Many convictions for felonious homicide in this State are reversed because of errors relating to the charge on manslaughter. From the standpoint of the district and county attorneys in Texas, the greatest difficulty in enforcing the laws against homicide arises out of the distinction between a voluntary homicide committed under the immediate influence of sudden passion, arising from an adequate cause, called "manslaughter," and a homicide committed upon malice aforethought called "murder."

The existence of certain facts are recognized by the law as ameliorating or extenuating circumstances which reduce the homicide to the grade of manslaughter. In the practical application of law and the administration of justice, the jury does not need any highly technical rule of law to distinguish between the punishment merited by one who upon malice aforethought has taken human life, and the one who, in resenting insulting acts or insulting words or conduct of the person killed toward a female relative, has taken human life. Those normal impulses which animate mankind will come to the relief of the one who actually kills under the immediate influence of sudden passion, with the statute upon the book as above suggested.

just as readily as they would under the present statute on manslaughter with a technical charge on the law. If the law should be changed as suggested above, the accused would be tried, convicted and punished under a simplified law, and society would not be compelled to stand the cost of an appeal to demonstrate the accuracy or inaccuracy of an academic contention for a principle of law. While the case is in process of appeal, justice is delayed, the accused enjoys his liberty, and those criminally inclined feel no terror for the punishment of the law or respect for its mandates. Human life should be made more safe and more sacred in Texas.

5. Section 5 of Article V of the Constitution provides that "the Court of Criminal Appeals shall have appellate jurisdiction, co-extensive with the limits of the State, in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law." Many cases are appealed to the Court of Criminal Appeals for no other purpose than to delay the administration of justice.

I suggest that adequate legislation be adopted to provide that in all criminal cases the accused or his counsel shall, within thirty days after the judgment of conviction or the order overruling the motion for new trial, present to the trial judge for his approval, and file with the clerk of the trial court, an original and copy of defendant's statement of the matters and things complained of as error and upon which the appeal is to be based; that the copy of such statement, when approved by the court as specifying matters which have actually transpired in the trial of the case, shall be certified by the clerk of the trial court and shall be filed with the Clerk of the Court of Criminal Appeals within ten days next after being filed in the office of the clerk of the trial court; that when such copy, properly approved and certified, is filed with the Clerk of the Court of Criminal Appeals he shall enter same upon a proper docket or book to be kept by the Clerk of that Court, and call the attention of the Court of Criminal Appeals thereto; that from an examination of such statement, the Court of Criminal Appeals shall direct that

the case be affirmed; or that the case be reversed and remanded; or that the case be reversed and dismissed; or that the clerk of the appellate court shall direct the clerk of the trial court to prepare a transcript of the record and transmit the same to the Court of Criminal Appeals for a review of the case; or make such other order respecting the appeal as the statement may show to be necessary to promote the fair administration of justice.

Such a system would not deprive any defendant of the right to carry his alleged errors on the part of the trial court before the appellate court for a review of the questions, and it would enable the appellate court rapidly and speedily to dispose of those cases presenting no merit; and sentences on pleas of guilty and other cases, where an appeal is taken for no other purpose than to secure delay, would be carried out within a few days after the judgment of the trial court had been entered. This principle may be successfully applied to the appeal of civil cases.

6. That Article 650-653, Code of Criminal Procedure, be amended so as to provide that where several defendants are indicted jointly, severance shall not be a matter of right, but shall rest in the sound discretion of the trial court; that each defendant shall be allowed to testify; and that where severance is granted, the order of trial may be determined by the court, or the defendants, as is now provided by law.

7. I suggest that provision be made that the clerk of each of the several district courts of this State shall, by the first of June each year, file with the Clerk of the Supreme Court of Texas a statement of the condition of the docket of the court of which he is clerk, showing the number of cases filed, and the number disposed of, and the number remaining on the docket, so that the Supreme Court may have information before it at all time as to the condition of the dockets of the several district courts of this State. Provision should then be made, even if requiring a constitutional amendment, giving the Supreme Court power, upon its own motion or at the request of the district judge of any judicial district of the State, to send another judge to the district to as-

sist in relieving the congested condition of the docket. There is a constant demand for an increase in the number of judicial districts in the State, whereas, in many judicial districts the amount of business does not demand all of the attention of the district judge. By making provision for the power in the Supreme Court to assign judges from one district to another for the purpose of disposing of congested litigation, the State could be saved money and the administration of justice promoted.

Civil Service.

I believe that those who direct governmental policies should be responsive to public opinion, and that the appointive heads of department should be subject to change with changing administrations, and that only those whose views are in accord with the prevailing popular will should formulate the policies which are to control the operations of government. This principle, however, does not extend to subordinate employees, and particularly to those places under the government requiring technical knowledge and skill; and I believe that greater efficiency in the administration of government would be insured through the enactment of a classified civil service act which shall protect technical experts and subordinate employees in the service of the State by securing their tenure of office through changing administrations. I have consistently urged, as a sound policy of State government, the establishment of a system of merit for the civil service of the State, and urge upon the Legislature the most careful consideration of the subject by them, and that a measure wisely adapted to the conditions and requirements of Texas providing for a classified civil service be adopted.

I believe that the system can be adopted without increased cost to the taxpayers of Texas by employing some of the existing agencies of the government as a civil service commission, and that such employees as may be necessary to carry the system into effect can be paid from the fees incident to the examination of applicants. The clerk of the appellate courts of last resort are removed

from the appointment of the Governor and from his political influence, and could be utilized as a civil service commission.

In this connection, I digress to suggest to you that the constantly increasing call upon the Legislature, through the past few years, for more State employees, has very likely given the State employees that are not actually needed in the civil branches of the government. I want urgently to request that the Appropriations Committee of the House, the Finance Committee of the Senate, and the Representatives and Senators, in preparing the appropriation bill, give attention to this matter, to the end that appropriations be made for only those employees whose services are needed.

Departmental Accounting.

Provision should be made for a modern uniform system of accounting in the departments of the State Government; also that the Board of Control annually audit the books and accounts of such departments, using its own experts for that purpose. An investigation by this Legislature into the manner of accounting heretofore employed by the Highway Department will immediately reveal the wisdom of such enactment as is here proposed.

Pardons.

In considering applications for pardon, I believe that whoever under the Constitution exercises the pardoning power should assume that the prisoner has been legally convicted, and that the jury or judge, upon a knowledge of the facts and circumstances, has fairly fixed his punishment, unless the contrary be made to appear with certainty. I do not believe that judgments of conviction should be impeached by executive proclamation. I believe in the reasonable exercise of the pardoning power and that each application should be considered upon its merits. The power should be exercised only when the purpose of the punishment has been accomplished.

I advocate the passage of a law which shall provide that upon the filing of an application with the Board of Pardon Advisers, the secretary or clerk of the Board shall noti-

fy the prosecuting officer and sheriff of the county in which the applicant was convicted, that such application has been filed and that they will be given a specified time within which to offer reasons why the pardon should not be granted.

Revised Statutes.

At the last Regular Session of the Legislature, the Revised Civil Statutes of 1925 were adopted. It has developed that there are many inaccuracies and imperfections in this work, and that statutes affecting valuable rights have been either omitted or materially changed through inadvertence. I recommend that the Legislature make provision for the appointment or selection of some person to examine the statutes and point out and report to the Legislature such errors, so that the same may be corrected at as early a date as possible.

State Highways.

Provision should be made for necessary funds for the establishment, development and maintenance of a system of public roads. The designation of between 20,000 and 25,000 miles of highway, (and it is surprising to say that the exact figures as to mileage seem to be inaccessible) has materially increased the burden of highway administration in Texas. Many miles of these roads are difficult, if not impossible, of proper maintenance. The demands upon the highway fund for maintenance of this extensive mileage have substantially reduced the amount of money available for building permanent roads upon which the maintenance cost is low. I am advised by the Federal authorities that the maintenance of highways in this State is not satisfactory, in that it does not measure up to the standards set by the Federal Bureau of Public Roads.

I respectfully ask that before attempting to provide adequate revenues for the support of the highway program, you obtain complete information as to the present statutes of the Department. The obligations first, for maintenance, second, for contracts let and in course of performance, and third, for allotments promised, will total an enormous sum. The information thus gathered will show the necessity for a stabilized income for this De-

partment, if the present obligations of the Department are to be met, and a systematic plan for the construction of a correlated system of highways developed and carried out. I trust that you will be able to see that the income is made available. I want to suggest to you that some of the proposals that have been made will not meet the needs of the situation which confronts us, but will actually reduce the revenues of the highway fund.

The promise of liberal allotments made during the past two years, the designation of many miles of highways with the resulting increase of the maintenance item, together with the unsatisfactory character of maintenance necessary, have made the demands upon funds of the Highway Department much greater than they would have been under a sound management of our highway affairs. But the situation is one which must be faced. It is desirable to match all Federal aid available and that must be taken into account in determining the revenues needed. The policy of this State has been to use the gasoline tax as a source of revenue for the highway fund. It is my purpose and endeavor to avoid tax increases and, by cooperating with the Legislature and by insisting upon the practice of frugality on the part of all public employees, I hope to accomplish a saving to the people of Texas. And to this policy I firmly commit myself. If you find, as I believe you will, from an investigation of the Highway Department, that additional revenues are needed now by the highway fund, I suggest that you look to the gasoline tax as a means of supplying this revenue. I will add, however, that I hope that, as one result of the general readjustment of our taxing system suggested in other portions of this message, some form of stabilized income will be made available to the Highway Department sufficient to meet the growing development of our highway system.

Appropriate legislation should be passed to aid in the building of lateral roads extending out to the farms which are now on mud roads, but which bear a part of the tax to build good roads. The revenues available for road purposes should be equitably divided between the State and counties, so that the counties will be able

to improve these roads. This will reduce the number of requests for designation of highways, and ultimately reduce the amount which the State is now required to spend in the maintenance of highways. Certainly the State cannot build and maintain a highway in front of every man's door, but the thousands of our citizens who live far removed from the improved highways should receive consideration at your hands. It should be remembered that all these desire and need better roads, and that an equitable basis of division should be adopted to the end that the interests of the people living on the farms may be properly safeguarded in the development of our highway system. In the general readjustments of our taxing system suggested elsewhere in this message, means should be provided for the support of county road programs.

I do not believe that the Legislature can well afford to undertake by legislative enactment to fix the general policy of the Highway Department.

I do believe, however, a great improvement of our highway system can be accomplished by adopting the following policies:

1. That the Highway Commission shall cause to be made, under the supervision of its engineering force, a survey of all designated roads; and that such roads shall be classed as first, second and third class, according to character of construction, traffic demands, and relative importance in a connected and correlated system of public highways.

2. That in the construction of public roads, regardless of the funds used in the construction thereof, durable types of road building material should be used, demanding only the minimum amount of maintenance, with the view of keeping a connected system of principal highways intended to serve the greatest number of citizens. Where roads are built from State and Federal funds, the plans should contemplate the completion of the principal highways of the State, accommodation of the greatest number of people and the heaviest traffic. Where the funds available are insufficient to construct a road of durable type, the effort should be to use a type of construction which may be maintained at a minimum of cost until funds are available to com-

plete the road with a more durable character of construction.

3. That the advice of the engineers and technical experts employed by the Highway Commission shall be followed in so far as possible and consonant with the good of the system.

4. That the program of maintenance of the large mileage of designated highways consisting of dirt and other unimproved roads which, for lack of funds cannot be made into durable highways in the immediate future should include the substantial betterment year by year of such roads by proper drainage, grading and repairing of structures and using good material which would increase the serviceability at small cost.

That the Highway Department shall at all times retain direct supervision over all maintenance work, but when practicable funds should be allotted to the counties by the Highway Commission from the highway fund to be used exclusively in the maintenance of designated highways within the respective counties to which the funds are allotted; or when practicable, contract relations shall be established between the Highway Department and the counties for the maintenance of designated highways. Such maintenance to be subject to the supervision, and under the direction of the maintenance engineer and the district engineers of the Highway Department. This plan does not contemplate the surrender of maintenance of designated highways to the counties, but rather that the Commission shall have the assistance of the counties in the accomplishment of proper maintenance and that the Commission shall at all times reserve the right to take over the work assigned the county organization whenever and wherever the arrangement is not found to be satisfactory. Otherwise, a patrol system of maintenance should be established along economical lines.

It may be that some of these are matters of policy which should be left to the Highway Commission, rather than be made the subject of legislative enactments. I realize that as conditions change from time to time, a change of policy for the improvement of the road system should not be made impossible because of

the existence of some legislative enactment.

I favor giving the counties a larger voice in the administration of highway affairs; and as a protection against waste and extravagance. I advocate the passage of a law which will give the commissioners' court of a county in which a highway is to be constructed, by the use in whole or in part of county funds, the right of representation to the extent that it shall have the privilege of, as the representative of the county, to sit with the Highway Commission and have a voice in the selection of the type of construction and in awarding the contract.

Election Laws.

Our primary election laws do not afford the best means of making an intelligent selection by the people of their public officers, and I suggest for your consideration a revision of the statutes regulating primary elections so as to better secure an expression of the will of the people in the selection of nominees. I reserve definite recommendations with reference to this matter for a message which I will at a later date transmit for your consideration.

Libel Law.

I favor a just and fair libel law which will protect newspapers and other publications in conveying information to the public. The newspapers and other publications should be, as they are, privileged to give a fair and accurate account of things said and done at public meetings. I favor the enactment of a law which will make proof that the thing to have been said or done at the public meeting was actually said or done, a defense to an action for libel brought thereon, without requiring that the defendant, which is merely a medium of information, be required to prove the truth of the thing said. I recommend that Article 5431, Revised Statutes, be amended so as to provide that in any action for libel the defendant may give in evidence, if specially pleaded, in mitigation of damages, the circumstances and intentions under which the libelous publication was made, and any public apology, correction or retraction made and published by him of the libel complained of.

Constitutional Amendments—Prison System.

I advocate that proper measures be passed to carry into effect the recently adopted amendments to the Constitution; and specifically suggest the enactment of a measure to carry out the amendment with reference to the management of the penitentiary.

The policy of our State toward our penal institutions should contemplate their maintenance upon a self supporting basis through the application of proper economic methods and the salvaging of the inmates for useful citizenship by securing satisfactory sociological conditions. Proper management would segregate the young from the old seasoned criminals, and the diseased from the healthy, and the humanity of those in charge should see that the sick are properly cared for without the interposition of legislation. However, if in your wisdom, with the counsel of your members who have been students of the prison system, you believe that it is necessary by law to insure proper sociological methods, I do not expect to do other than approve such legislation. Economic and sociological methods, as applied to penal institutions, are so closely connected and interwoven that it is difficult to separate the two. A self supporting penal institution contemplates the furnishing of regular work for the inmates as a basis for reformation, and it teaches industry, so that the prisoner, when returned to society, will be in a position to earn an honest living. This illustrates the close connection between the questions of economics and sociology as applied to the prison system, and that the proper solution of the one goes far in the solution of the other question.

In an effort to bring about the proper economic conditions in the State penitentiary, the people adopted the recent amendment to the Constitution, and this Legislature should pass appropriate Acts to carry that amendment into effect. I respectfully suggest that an Act be passed providing for the creation of a prison board, fixing the number of members, the term of each member and prescribing the time of meeting. The Commission should not be a salaried board, but its members should be paid their expenses and a nominal sum for the time spent in attending

meetings and visiting the prison system. The Executive Office will be charged with the responsibility for the management of the prison system, and its affairs should not be entirely removed from the Governor's control. Therefore I suggest that the board, with the consent of the Governor, be given power to select a manager. The salary of the manager should be fixed by law at a sufficient sum to insure that an experienced and trained man could be secured for the position. The board should have power to remove the manager, and the members of the board should be subject to removal as other officers, by quo warranto proceedings. The board should further have authority to buy and sell real estate for the prison system with the consent of the Governor. Some provision should be made to change the system of keeping the funds of the penitentiary in various banks and making the State Treasury the depository for the funds of that institution, with authority in the manager to approve accounts for payment by the issuance of warrants by the Comptroller and payment by the Treasurer, of a limited amount, without the consent of the board, but in any amount with the consent of the board. The manager should be required to report to the board and annually to the Governor. The manager, with the consent of the board, should have the power to prescribe reasonable rules and regulations governing the discipline of the prisoners, and he should have authority to employ and discharge other employees, with the consent and approval of the board.

I further suggest that you ascertain the present financial status of the penitentiary, and that you cause an inventory to be made of its property, based upon its present market value. When this has been done, the penitentiary should be placed upon a cash basis in as far as the revenues of the State will permit, so that the State may avoid the interest account incident to the obligations of the system and to the end that the State will not have to suffer a loss by buying at high prices on a credit basis. The plan of buying upon credit wherever credit can be secured, and operating the system on a twelve months credit basis, suggests that the State has lost money, be-

cause the method requires the State to pay high prices.

Public Salaries.

It has been urged that laws be passed and amendments submitted providing for the increase of salaries of certain officers of the State government. I am not a believer in high salaries for public officers, but it is apparent that the salaries fixed by the Constitution written fifty years ago require in some instances, unreasonable sacrifice in the holding of public offices. I favor reasonable increases in some of these salaries, and am willing to support such increases, provided the amendments submitted are to become effective at the expiration of the tenure of those in office at the time of the adoption of the amendment; but I am opposed to the increase of official salaries fixed by the Constitution except they be made to become effective after the expiration of the terms of the persons holding the offices affected at the time the amendment is submitted. I am not in sympathy with the position of a man who becomes a candidate for an office, and after his election seeks an increase of his salary to become effective during his term, and I would be disposed to oppose any such measure affecting official salaries.

The continually changing value of the dollar and the expense incident to constitutional amendments, suggest that the people might deem it wise to leave the matter of all official salaries to their representatives.

Education.

The Educational Survey Commission authorized by the Thirty-eighth Legislature has filed its report. In order that the people may profit from the results of this investigation, the Fortieth Legislature is urged to give the suggestions mentioned very careful consideration.

I favor a liberal policy toward our public school system and our institutions of higher learning, and I shall at a later date send you a further message upon this subject, making specific recommendations intended to improve our educational system and to secure an equality of educational opportunity to the boys and girls of Texas. In connection with the suggested changes in our system of taxation, I believe that an effort

should be made to secure a stabilized income based upon the taxable wealth of the State for the support of our institutions of learning, so that every child shall have an equal opportunity to secure instruction for the same period or term.

At a later date I will have other suggestions to make to the Legislature of measures affecting the free text-book situation of this State.

Married Women.

The law provides that the courts shall have power to enter an order compelling the husband to furnish a reasonable allowance for the support of the wife out of the separate estate of the wife, but this provision is more or less meaningless in view of recent legislation with reference to the right to manage the wife's separate estate. When, however, the wife has no separate estate, and there occurs an estrangement between the husband and wife through the dereliction of the husband, no effective means is within the reach of the wife to force the husband to furnish her support. There are three remedies open to her: first, the civil liability of the husband for the necessities of the wife, second, divorce, and third, prosecution for non-support or substantial desertion, and this can only be maintained where the wife is living in destitute or necessitous circumstances. Neither of these is adequate.

Provision should be made by law giving the wife during marriage the right to go into court and ask for an order compelling the husband to furnish a reasonable allowance, his circumstances and conditions in life being considered, for the support of the wife and children out of the community estate without suit for divorce. This remedy should at least be made available to a married woman in Texas.

Motor vehicles engaged in the transportation of passengers and freight as common carriers should be made subject to the reasonable regulation of the Railroad Commission. This should extend to route of travel, rates charged, and schedule, and the Commission should have power to require operators to properly protect the public.

The future of our State depends in large measure upon the development

of its agricultural possibilities. Farming enterprises should receive a reasonable return on the capital and labor invested as do other enterprises. Nothing is more important to Texas. The recurring periods of depression in the prices of agricultural products, which result from a production in excess of consumption and inadequate methods of distribution, seriously affect the prosperity of the people of this State. The law of economics, which has a more universal application than legislative enactments, is generally responsible for each change in the prosperity of our people engaged in agriculture. Legislative enactment cannot completely solve the question, but can only act as an aid in the solution. Your careful consideration of provisions for the development of adequate warehousing facilities, and encouragement of more judicious marketing of our staple crops, through legislation intended to promote the development of facilities for the co-operative marketing of agricultural products, may add to the protection of the wealth derived from the farming enterprise. Each of these is, in my judgment, an appropriate subject for your legislative consideration. However the efficacy of any of these measures cannot be determined until the measure has been put to practical test.

Corrupt Practice Act.

I further recommend the passage of appropriate legislation to prohibit members or officers of one department from accepting employment to practice before other departments of the State Government, except the practice of attorneys before the courts and the Department of State and the Attorney General's Department and Board of Water Engineers. Legislation of this kind has been passed in other jurisdictions. It is wholesome, designed to promote the development of good government, and has met the test of the Constitution.

Conclusion.

Permit me to express the hope that this Session of the Legislature may result in the accomplishment of good to the people of Texas. I offer you my fullest co-operation in

all of your efforts to promote and develop our State and to bring prosperity and happiness to all the people. This is not now, and never has been, a State dominated by special interests and predatory wealth, but it is a State for the masses of the people, offering larger opportunity to the individual citizen than any other State of the American Union. Let us as servants of the people turn to the high duty of furthering the welfare and contentment of the splendid citizenship of our beloved State.

DAN MOODY, Governor.

EIGHTH DAY.

Senate Chamber,
Austin, Texas,
Monday, January 24, 1927.

The Senate met at 10 o'clock a. m. pursuant to adjournment, and was called to order by Lieutenant Governor Barry Miller.

The roll was called a quorum being present, the following Senators answering to their names:

Berkeley.	Parr.
Bowers.	Price.
Fairchild.	Real.
Floyd.	Russek.
Hardin.	Smith.
Holbrook.	Triplett.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.
Neal.	

Absent.

Reid.

Absent—Excused.

Bailey.	Pollard.
Bledsoe.	Stuart.
Greer.	Ward.
Hall.	

Prayer by the chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

Senators Excused.

On motion the following Senators were excused:

Senator Bledsoe indefinitely.

Senator Stuart for today and Senators Hall, Bailey, Ward, Greer and Pollard indefinitely.

Petitions and Memorials.

(See Appendix.)

Committee Reports.

(See Appendix.)

Bills and Resolutions.

Senator Floyd sent up the following resolution:

Simple Resolution No. 32.

We ask approval of the Senate in the appointment of Miss Hannah Joseph to Assistant Engrossing Clerk to take the place of Kathleen Martin, resigned.

WESTBROOK,
FLOYD.

The resolution was read and adopted.

Simple Resolution No. 23.

Senator Hardin sent up the following resolution:

Whereas, the Senate of Texas has learned with profound sorrow of the passing of Judge Norman G. Kittrell at his home in Houston on yesterday afternoon, and

Whereas, as District Attorney, District Judge, Appellate Judge, Legislator and writer, he rendered the people of Texas valuable and distinguished service.

Therefore, be it resolved by the members of the Senate of Texas that we deplore his passing, that in his going, the State has sustained a great loss, that we extend to his bereaved relatives our sincere sympathy in this sad hour, that the presiding officer of this body convey to them in such manner as he may choose, expressions of our grief, and that when we adjourn today it be done in respect to his memory.

HARDIN,
FLOYD,
LOVE,
FAIRCHILD,
TRIPLETT,
HOLBROOK,
MILLER,
LEWIS,
REAL,
WOODWARD,
WITT,